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SUPREME COURT OF THE UNITED STATES

Tipton County

No. 75.] *vs.*

Rogers' Locomotive and Machine Works.

Same

No. 76.] *vs.*

Norton, Slaughter & Co.

Same

No. 77.] *vs.*

J. T. Edmonds & Co.

In Error to the Circuit Court of the United States, for the District of West Tennessee.

ORAL ARGUMENT

OF

HON. STANLEY MATTHEWS,

For Defendants in Error,

NOVEMBER 19, 1880.

Robert Clarke & Co., Printers, 65 W. Fourth St., Cincinnati. [*Nov. 1880.*

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ORAL ARGUMENT OF HON. STANLEY MATTHEWS, FOR DEFENDANTS IN ERROR, NOVEMBER, 19, 1880.

If your Honors Please:

It was the effort of the learned counsel for the plaintiff in error to seek to take this case, so far as it rests upon the invalidity of these bonds, out of the category of general constitutional law, upon the theory that the provisions of the constitution of the State of Tennessee, and the decisions of the Supreme Court of that State, construing those provisions, were exceptional.

I think that is a manifest error, for there is nothing in the language of either of the constitutional provisions on

which he relies, which is not plain and familiar in the history of constitutional law. The principles which are involved in them are as old as *Magna Charta*, and certainly as familiar as the Declaration of our National Independence. They are to be found, in substance, in many other constitutions, particularly, and in a more concise, though not less comprehensive form, in the constitutions of California, of Iowa, of Kansas, and of Ohio, where all that is embraced within the prohibitions against unequal and impartial legislation, is contained in the shorter phrase, that all laws of a general nature shall have a uniform operation throughout the State.

I think, therefore, that the case, in that respect, falls strictly within the rule laid down by Mr. Justice Swayne, speaking for the Court in the case of *The Township of Pine Grove* v *Talcott*, 19 Wallace, 677, in which two judgments of the Supreme Court of Michigan, on a constitutional provision of that State, were overruled by this Court, on the ground that the question was properly within the domain of general jurisprudence, and that, therefore, this Court, in the exercise of its acknowledged jurisdiction in every case in which a federal question arose, was bound to exercise its independent judgment.

And I may say that that is specially incumbent on the Court in this case, where the jurisdiction not only involves the question as to the validity of a contract, the obligation of which is impaired, if a subsequent judicial decision of the Court takes away from the party what, upon the construction of the law previously, he had a right to rest upon, but also upon the other and distinct ground that this is a jurisdiction invoked originally in the Circuit Court of the United States, between citizens of different States, where a controversy had arisen between them; the very object and purpose of which jurisdiction, as vested in that Court by

the constitution of the United States, was to rescue the plaintiff from the very thing which the counsel for the plaintiff in error here seeks to impose upon him, and that is the effect of the bias, the prejudice, the interest of a community, which has received the benefits of the contract, to repudiate its obligations when they become inconvenient and hard.

And, therefore, the citation of a decision by the Supreme Court of the State, and the eulogy pronounced upon the possible or probable accuracy of the opinion of the federal judiciary in that State, because they are citizens of the State, because they have been born, bred, and raised in the atmosphere of its jurisprudence, are arguments against the gentlemen, and not against us, when we ask to come out of that local bias into the freer atmosphere and light of an impartial jurisprudence, and seek the protection of this Court, because we say that we can not get justice in the local tribunals. That is the very ground on which this Court has acted and declared that it would act, in several cases, particularly in the opinion delivered by Mr. Chief Justice Taney, in the case of *Rowan* v. *Runnells*, 5 How. 134, that if the comity, due to the State decisions, was pushed to the extent contended for, the provision of the constitution of the United States, which secures to citizens of another State the right to sue in the Courts of the United States, might become utterly useless and nugatory, as it certainly would be here upon the facts as they exist.

I.

If your Honors please, without further preface, my first suggestion or proposition on the constitutional question, is that the case does not come within the substance

of the provision, as contained within the prohibitory clauses. It is not the case of a suspension of a general law, for the benefit of a particular individual; it is not the case of a law passed for the benefit of individuals, inconsistent with the general laws of the land; it is not the case of a law granting to an individual or individuals rights, privileges, or immunities other than such as may be by the same law extended to any member of the same community who may be able to bring himself within the provisions of such law. And it is not for the reason, first, that this law, spoken of by the counsel for the plaintiff in error, *i. e.*, the law of 1852, authorizing all the counties of the State to subscribe to the stock of railroads on certain contingencies and conditions, and in certain ways, by a vote of the people, is not a *general* law. It is a law general *in its form*, but *its nature* is not general; it is local, several, particular, and distinct. It is a law for each county.

It is admitted, in the argument of the counsel for the plaintiff in error, that the legislature of Tennessee could have passed an act, authorizing, by name, the several counties, bordering on the Mississippi river, from Memphis to the Kentucky line, to vote, by their county judges, for a subscription for the stock of the road; in other words, that the identical statute, now declared to be unconstitutional, would be valid as a constitutional exercise of power by the legislature, but for the prior passage of the act of 1852, to which, it is said, it constitutes an exception, or of which, it is said, it constitutes a suspension.

My answer is that the law of 1852, is not a *general* law in the sense of the constitution; it is not a law of a general nature. Suppose that in 1852, having passed that statute as it now is, they had added, by way of amendment, a proviso or additional section in these words: "Nevertheless, notwithstanding any thing herein previously contained,

it shall be lawful for the counties bordering on the Mississippi river, without any vote of the people, to subscribe stock in aid of the construction of the Mississippi River Railroad." What kind of law would that have been under the circumstances? Would it have been any the less a general law than it is? How would it conflict with the constitution, even upon the argument of the learned counsel for the plaintiff in error?

If the Court please, this does not rest upon any mere *ipse dixit*. This matter has been the subject of judicial decision as early as the case of *Cass* v. *Dillon*, 2 Ohio St. 617, which was one of the earliest cases where the prospective, as contradistinguished from the retrospective, constitutional prohibitions against giving aid by counties to railroads were discussed, and this very question, among others, was made, to wit, that the law was obnoxious to the provision I have already spoken of in the constitution of the State of Ohio of 1851, namely, that it was a law which violated the principle that all laws of a general nature shall have a uniform operation throughout the State. Judge Thurman, then sitting on the bench of that Court, discussed—not, however, at any very great length—the proposition, and held that, although it was a public law, it was not a law of a general nature.

He says, on page 617:

"It is no more of a general nature than would be an act to authorize the construction of a bridge or the erection of a poor-house. As well might it be said that the act authorizing Hamilton county to build a jail (49 Ohio L. L.) was of a general nature, and therefore repealed."

This matter has been several times under discussion in that Court, and very largely so in a very important case, for it was a criminal case in which a sentence of death had

been passed—the case of *McGill* v. *The State*, 34 Ohio St. 245, where the objection was taken that the jury, who had convicted the defendant, was drawn in Cuyahoga county under a special act applicable to that county alone, and the argument was made that the whole array of the jury was void, because the act itself was contrary to that provision of the constitution which I have just alluded to; and the Court gives a decision in that case which I think valuable, as well as a discussion of the cases in the several other States in the laws of which similar provisions are found. It said:

"The difficulty encountered in all cases where a legislative act is alleged to contravene the provision requiring the uniform operation of laws of a general nature, lies in determining what constitutes a law of that nature within the meaning of the constitution. The test is said to depend upon the character of its subject-matter; that if that is of a general as distinguished from a local or special nature, existing in every county throughout the State, a subject in which all the citizens have a common interest, then the law is one of a general nature, requiring a uniform operation throughout the State."

Mr. Justice FIELD. Is that case on your brief?

Mr. MATTHEWS. No, sir; I have no brief. But, if your Honors please, I will submit a printed report of what I say, with all the authorities.

It is manifest from the subject-matter of the statute of 1852, that it is not a general law, in the sense of the constitution of the State of Tennessee, because it is a law having reference only to the action of the counties separately, severally, distinctly.

To have made it a law of a general nature, in the sense in which that word is used in these provisions, it should have been a law affecting all the people of all the

counties, and then it would have been palpably unconstitutional, unless the legislature had determined that the particular improvement was one of such general interest as that the whole State might be taxed for it. It would have been necessary that this should be the case, to have authorized the counties in the Eastern District of Tennessee (east of the Cumberland Mountains) to levy a tax upon their people for the purpose of constructing a line of railroad running from Memphis to the Kentucky State line, along the Mississippi river.

The justification for the action of the legislature in conferring upon the particular counties the special power which is here challenged as unconstitutional because it is special and specially conferred, is that the purpose for which that power is invoked, is a public purpose to those counties, and not public to any other counties in the State, because those are the only counties through or into which the railroad runs, or who are to be benefited directly by its construction.

So that to have made this a general law, in the sense that its subject-matter extended to all the people of all the State, so requiring all the people to be taxed for the purpose of constructing a railroad in which they had no special interest, would have rendered it obnoxious to the other constitutional prohibition, namely, that of taking property without process of law; or that it was unequal and partial, because it was compelling the people of one section of the State to pay for that which did not interest them, and imposed upon them a burden without a corresponding benefit.

But, if your Honors please, not only is this not a general law, *but it was not passed for the benefit of any particular individuals.* Waiving the question whether a corporation is or is not an individual, this law was not passed for the benefit of the Mississippi River Railroad Company in the

sense of that provision against giving to individual persons benefits which others do not have. What is the motive and purpose of this constitutional prohibition? It is to prevent the establishment of privileges of that character—of individual advantages and benefits over and above the general level of advantage and benefit which constitute the common good.

That is not the motive of this act. This act is not to benefit the Mississippi River Railroad Company. It was to benefit the people of Tipton county. If it had been merely an act to benefit that railroad company, it would have been obnoxious to other provisions of the constitution, that it imposed taxes for some thing else than a public purpose. But this was not passed for any private purpose, and therefore it was not passed for the benefit of any particular individual. This is a corporation—a public person—and the grant of the public taxes to it is justified on the ground that the purpose to which they are to be applied is a public purpose, and therefore a part of that general good which justifies legislation, even under that prohibition.

I cite to your Honors, as bearing upon the same point, three cases decided by this Court:

C. B. & Q. Railroad Company v. *Iowa*, 94 U. S. 163.
Railroad Company v. *Richmond*, 96 U. S. 529.
Missouri v. *Lewis*, 101 U. S. 22-30.

II.

But, if your Honors please, it is hardly worth while to stand on the threshold, when here in the proviso to that constitutional provision, as construed by express and positive decision of the Supreme Court of the State of Tennes-

see, referred to already by the counsel who have preceded me, an express exception is made that if, by possibility, this prohibition might go so far, to relieve from the operation of its prohibitions, the unlimited power in the legislature to pass such charters of incorporation as may be deemed expedient for the public good. What reply can be made? Here is a railroad company and it is chartered; here is the county of Tipton. Are they, or are they not, corporations? Are these laws, which are challenged, and the validity of which is denied, acts of incorporation? Let us see about that.

This Court has decided both those questions. In the case of *Empire* v. *Darlington*, 101 U. S. R. 91, it was held, that the power of the county to make a subscription to the stock of a railroad company was, in its essence, a right and privilege of the railroad company; so that, as one of its franchises, it would pass to its legal successor—reaffirming in that decision the prior decisions of this Court in *County of Scotland* v. *Thomas*, 94 U. S. R. 682; *County of Henry* v. *Nicolay*, 95 U. S. R. 619; *Wilson* v. *Salamanca*, 99 U. S. R. 504.

So that, although it may occur in a statute that either does or does not purport to be an amendment to a charter, it is, nevertheless, an act of the legislature creating an additional franchise in that corporation, and passing, with the body of its property and its franchises, to its legal successor by consolidation. It purports, in fact, to be an amendment to the charter of the company; and was a direct investiture of it by the legislature with the franchise of being able to receive its aid by way of subscription from those counties, including the county of Tipton. It was therefore the exercise of the general legislative power of the general assembly of the State, creating a corporation; conferring corporate power; and the constitutions to which I

have referred, particularly those of California, Iowa, and Ohio, go beyond the constitution of Tennessee in restrictions in that respect, because they forbid the passage of any acts conferring corporate power unless they are general. But here there is no such provision.

Special acts, it is admitted, may be passed, conferring corporate power. The proviso, in question, was inserted, by way of abundant caution, in order that the whole people and courts might be warned that it was not intended, by the general language of that provision, to prevent the general assembly, in the exercise of its discretion for the public good, from creating corporations free from the limitations of the prohibitory clauses.

On the other hand, the county of Tipton itself, by having conferred upon it this power to subscribe to the capital stock of the Mississippi River Railroad Company, and by exercising that power, became something more than a mere municipal body, a part of the territorial government of the State; it became, by virtue of that power and its exercise, a private corporation; it became invested with the power of becoming a shareholder in the railroad corporation, and so this Court decided in the case of *Broughton* v. *Pensacola*, 93 U. S. R. 269, where it was decided by the Court expressly—though I shall not take time to read the exact language of the extract—that to the extent to which they are authorized to subscribe stock to a railroad corporation, to that extent municipal bodies are to be deemed private corporations.

So that, on both hands, whether you regard the franchise as conferred upon the railroad company or upon the county, in either aspect, it is the exercise of the power of the general assembly to confer corporate power, and so within the proviso and not within the body of the constitutional clause.

And such, if your Honors please, is the direct decision of the Supreme Court of Tennessee in the case of *The City of Memphis* v. *The Water Company*, 5 Heiskell, 530, wherein it is said that—I quote now—

"In this grant of power to create corporations, there is no limitation on its powers, at least as curtailed by the general terms of the section."

Of course, the power to create corporations is bounded and limited by the other provisions of the constitution, but not by that one, because the power to create a corporation is an exception out of the very prohibitions which are now sought to be applied to it.

III.

If your Honors please, the constitutional validity of this statue is supported, independently and expressly, by article 2, section 29, of the constitution of Tennessee, which declares that:

"The general assembly shall have power to authorize the *several* counties and incorporated towns in this State to impose taxes for county and corporation purposes, *respectively*, in such manner as may be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to state taxation."

Certainly, the exercise of that power is not made subject to the interpretation which is put upon the prohibitory clause of article 2, section 7. They are both sections of the same article, and stand—according to its terms—without ambiguity.

It is a power to do that which, under a prior constitution, it was thought there was no power to do—and that was, to delegate the power of taxation from the gen-

eral assembly to local bodies. And, by the same decision, which resulted in that, it was also held, that such an exercise of power was unequal in respect to the exercise of the taxing power; and, to meet those difficulties, the constitution of 1834, for the first time, confers, by an independent provision, this power, and it is *several*, it is not general; it is a power to authorize the *several* counties, to authorize the counties severally, if necessary, by name or by classification, but certainly not by any general law which should be required to have a uniform operation.

And why not? Does one county need exactly everything that every other county needs? Could you make a general law, applicable to all the counties of any State, for purposes of taxation and in reference to corporate purposes? Are their purposes not as various and as varied as their local situations? And is it not in reference to the variation of their local situations, that the power is given to sever one county, or one class of counties, from all the rest, in order to effectuate a wise public policy in reference to their interests?

The learned counsel on the other side says that the contrary of what I am saying was so fundamental an idea, that it was incorporated into an express provision of the constitution of 1870; and yet, if your Honors please, that very constitutional provision names certain counties wherein it is permitted that they may grant aid to railroads, whose construction comes within the purview of their purposes, by a different rule from that applicable to the other counties of the State, prescribing that, as to the general mass of counties, the jmaority should be at least, I think, three-fourths; but that, as to certain named counties, their aid might be granted by a majority less than that, being only a majority of the votes, until the year 1880, when no such distinction shall thereafter exist:—thus, having refer-

ence, even in the question of the majority of the popular vote to be given in all cases, to the distinction as to the local interests of various counties.

And, but for that interpretation, if your Honors please, it would not be possible to carry on the business of government in a State like Tennessee, in any sensible way, for three weeks in succession, if, every time one county had to build a court-house, all had to build court-houses, or if they all had to contribute to the building of the same court-house. That would be the absurd consequence of holding that these prohibitions apply by virtue of the provisions of the article as to unequal laws. This Court has many times had occasion to give interpretations to similar provisions, and to hold that they must be construed distributively, with reference to the particular local interests and purposes, which are the manifest objects sought to be subserved.

If your Honors please, that is all I desire to say on that branch of the case.

IV.

It appears from the record that to the original declaration upon the bonds, there was a demurrer which was overruled, and then two pleas filed; one, *non est factum*, and the other, *nil debet*. There was no special plea setting up any facts of fraud in the original issue of the bonds. Of course, I lay no stress on the question of pleading.

The offers of evidence, on the part of the defendant below, are stated as follows:

"1. The defendant then offered evidence of facts tending to prove and establish fraud, moral coercion,"—

whatever that may mean—

"intimidation, and bribery in the procurement and issuance of the bonds in suit in this case, upon the part of the said Mississippi River Railway Company.

2. And also offered evidence tending to show and prove that said fraud, moral coercion, intimidation and bribery were unknown to the County Court of Tipton county, in October, 1871, when Norton, the president of the Paducah and Gulf Railroad, bore the proposition of the Mississippi River Railway Company to said County Court to extend the time of payment of said bonds, and to levy a tax therefor, as shown by said proposition, and at which time Norton spoke of the contemplated consolidation of said roads, as hereinafter shown by his testimony offered in rebuttal by plaintiff.

3. And offered evidence tending to prove that the aforesaid corrupt practices were not known to said County Court until February, 1875.

4. Defendant also offered evidence tending to show that the plaintiffs received the bonds in suit from the Paducah and Memphis Railroad Company, after the said bonds were overdue."

Which means, as I understand, after they were overdue upon their face: for the facts, as shown by the record, are that they were obtained by all the parties prior to the expiration of the extended time, which was given by virtue of the agreement made by the County Court.

Upon this state of the case, and with the other evidence which appears in the bill of exceptions, the judge who tried the cause below, charged the jury, at the request of the plaintiff, as follows (p. 43, Record):

"That if you credit the testimony, and from it believe that Mr. Norton, as president of the Paducah and Gulf R. R. Co., in October, 1871, appeared before a duly organized County Court of Tipton county, and in open Court fully explained to it that a consolidation was con-

templated between his company and the Mississippi River R. R. Co., and that such consolidation depended upon the fact whether the bonds in controversy were to be paid by the county, and whether it would proceed to levy a tax for the same, and then and there presented the proposition of the said Mississippi Company, recited in the resolution of that date, passed by the said County Court, and that said Paducah Company was then solvent, and owned and operated a railroad from the town of Paducah, in Kentucky, to Troy, in Tennessee, and that no portion of the railroad in Tipton county was then completed, and that but a few thousand dollars had been expended in work thereon, and that the purpose of said consolidation was to complete said road in Tipton county, and to connect it with the line of said Paducah and Gulf Road, and that said road has since been completed to the town of Covington, in said county, to the city of Memphis, being a distance of thirty-seven miles, twenty-one whereof are in said Tipton county, and that said Norton communicated to his company the action of said County Court at its said October session of 1871, and that *in consequence thereof*, and *in reliance thereupon*, said *consolidation took place*,"—

Mark the language, if your Honors please—

" and that in consequence thereof, and in reliance thereupon, said consolidation took place, whereby said Paducah and Memphis Railroad was created, and that said latter company thereafter completed the road from Covington to Memphis, and has regularly run and operated the same from the 25th of June, 1873, to this date, and that the plaintiffs in this action, in the ordinary course of trade, and without any notice of ill faith in the procuration of said bonds, gave full value therefor to the said Paducah and Memphis Railroad Company, by furnishing engines to be employed on said road, and that said Paducah and Memphis Railroad Company received said bonds without any notice whatsoever of any fraud in their issuance; then the fact that one or more of the justices of said County Court,

who originally voted for said subscription of stock, were induced so to do by corrupt means, and all other proofs or matters of fraud, constitute no defense to this action. To which charge the defendant then and there excepted."

If your Honors please, if the effect of the agreement to extend the time of payment, which was duly entered into, and during the existence of which these plaintiffs became the owners of these bonds, for value and without notice, had the effect to make them innocent holders for value before maturity, then it is utterly immaterial and irrelevant what the Court said on the subject of estoppel, because the plaintiff would have a right to recover, independently of any such question, upon their title as holders of commercial paper for value, taken before due. And such is the state of facts as disclosed by the record.

If, on the other hand, as a question of law, it should be held that the agreement to extend the time of payment did not have the effect to make the bonds transferable by delivery as before; that according to the rules of negotiable paper, if they were still overdue, then it becomes material to inquire whether the Court did or did not err in this instruction.

I now call your Honors' attention to the fact that nowhere does it appear in this record that the plaintiff in error here (the defendant below) offered to go any further than as I have read, in its original offer of evidence of facts tending to prove and establish the fraud in the original issuance of the bonds.

It did not undertake to show any reasons establishing diligence on its part in finding out that fraud prior to the time when, in 1875, it says it first came to its knowledge.

And more than that, there was no offer to show that it desired, or intended, or had taken any steps, to re-

scind the contract by restoring the consideration, and so putting the parties back again into the place in which they were prior to the transaction. And I undertake to say that upon the established decisions of this and other tribunals, it was essential in an action of this kind at law, on the bonds, where the defendants relied upon the allegation of fraud in obtaining the bonds, and where the action was brought by a third person (not the original party to the transaction, even although the party may not stand in the attitude of being protected in their title as holders of negotiable paper), that there should have been at least a rescission or repudiation of the contract, and an offer of restoration of the consideration. I find the law on that subject sufficiently stated by this Court in the case of *Upton, Assignee*, v. *Triblecock*, 91 U. S. R. 115, and by a decision of Mr. Justice Miller, in the case of *Farrar* v. *Walker, Assignee*, reported in a note to the case of *Upton* v. *Englehart*, 3Dillon, 506.

And I respectfully call to the attention of your Honors, as containing a summary of the decisions of these points, to an article in the March number, 1880, of the American Law Review, on the effect of fraud on subscriptions to stock, in which, supported by sufficient citations of the very highest authority, it is stated that the necessary allegations of a plea of fraud are these:

"1. A distinct allegation of the matter in which the fraudulent representation or concealment consisted. A general charge that the subscription was procured through fraud, it is supposed, would be bad for want of sufficient particularity of statement,—it would not apprise the opposite party of the nature of the defense.

2. That he used reasonable diligence to make himself acquainted with the matters of fact in respect of which the fraud is charged, and that, within a reasonable time

after discovering the facts, he repudiated his contract and offered to surrender his certificate. In other words, he must show that he did all that could have been done, under the circumstances, to free himself from liability."

And, in reference to the time within which the rescission must be claimed, it is stated that the authorities appear to justify the following statement:

"1. The claim for rescission, in order to have any standing in Court, must be made in the shortest possible time after discovery of the fraud, or after the person seeking the rescission might, by a fair exercise of his opportunities of knowledge, have discovered it.

2. It will not be entertained, in any event, in the English courts of equity, after winding-up proceedings have been commenced.

3. Neither will it be entertained after the company has stopped payment and the directors have called an extraordinary general mee ing of the shareholders for the purpose of passing a resolution to wind up the company."

4. It seems also clear, upon principle, that it will not be entertained after the company has stopped payment by reason of insolvency."

And again, that:

"The person defrauded can not make his election to rescind after events have transpired which render it impossible for him to tender a *restitutio in integrum*. He can not, under the Scotch law, claim what is termed in that law a *restitutio in integrum*, where the circumstances have so changed that he can not restore exactly what he purchased; and the law of Egland is said to be the same. This he is disabled from doing in the following case: Where the company whose shares he was fraudulently induced to purchase has, since such purchase, with his consent, changed from an unincorporated to a incorporated company; for this change disables him from restoring the very thing

which he had been fraudulently induced to purchase, namely, the shares in the defunct unincorporated company."

Western Bank of Scotland v. *Addie*, 1 House of Lords (Sc.), 145.

"On the same grounds, one who had been induced by fraud to purchase shares in a company organized under the 'cost book' principle, could not recover back the money paid for them, after the company, with his consent, was registered as a company with limited liability. In such cases, although most of the persons who were responsible for the frauds in question became members of the new company, they did not thereby transfer to the new company a responsibility for the frauds committed by them while acting as agents of the old company."

Western Bank of Scotland v. *Addie*, *supra*.

"For the same reasons, the person so defrauded can not, after the happening of such a change, recover compensation of the new corporation in damages. He comes too late. The new corporation is not the person who is guilty of the fraud; and though it is, by the express provision of the statute by which it is incorporated, made liable for the duties and the obligations incurred before incorporation (that is, the duties and obligations of the preceding company), yet this does not transfer to it a liability to be sued for frauds on other wrongful acts committed by its directors before its incorporation."

Western Bank of Scotland v. *Addie*, *supra*.

Now, if your Honors please, what are the facts applicable to this case? Here the fraud charged is one that is said to have been practiced upon the representatives of the county itself, upon the justices of the County Court. Some years after that is alleged to have taken place, without any explanation or any reason given why in the interval, the same discovery might not then have been made, which, it is said, has since taken place, a new County Court composed

of different justices is approached with a proposition to extend the time of payment of these bonds upon a consideration, and a party, who is an intending purchaser, and known to be such, states that upon the faith of the answer which they make, he having the entire power to say "Yes" or "No," will vote accordingly upon the question of consolidating his own corporation with the Mississippi River Railroad Company, and thereby become a purchaser of these very bonds, as assets of that company.

And this new County Court, in respect to whom there is no suspicion or taint of any fraud, agree that, in consideration of the extension of the time of the payment of the principal of the bonds, they will proceed immediately to make regular levies of taxes for the purpose of meeting the interest, and paying the installments as they become due, in order that this project of consolidation may be effectually carried out, and thereby the construction of the contemplated road made not only possible but real.

And on the faith of that agreement the consolidation is effected. The railroad is built, and this very stock, originally subscribed in the Mississippi River Railroad Company, by the act of the subsequent County Court, is converted after the consolidation, for which that county voted on this stock, into the stock of the new corporation with a surrender of the original certificate of stock. They have sold to a new purchaser the stock which they subscribed, which they say they were induced to subscribe by fraud, and they ask the Court to relieve them from the payment of the original subscription price, after they have got from a purchaser full value for the very shares in respect of which they say they were defrauded; and they hold them to-day, together with the railroad itself, which was built to subserve a public purpose on behalf of the people of the county, and which justified the legislation

which authorized it, and the action of the county in so doing.

Is not that an estoppel? Is not that conduct forbidden by every principle of law, of equity, of natural justice? They have no right to say that the thing which they originally got was imposed upon them by fraud, when, before they set that up, they have traded it off for what they deemed to be a full valuable equivalent; and with that in their pockets, they come before this high tribunal, and lecture the men, whose money has built the improvement, and who confessedly had nothing whatever to do with the original transaction, as if they, and not their adversaries, were guilty of the rascality with which they are charged.

The language of this Court in the *County of Ray* v. *Van Sycle*, 96 U. S. R. 687, it seems to me, applies here with peculiar force; and with that reference, I submit the case.